

MONTANA HOUSE AGRICULTURE COMMITTEE
HOUSE BILL 445
FEBRUARY 12, 2009

Mr. Chairman, members of the committee, for the record my name is Ron Ueland. I am from Butte and am a fourth generation Montana farmer and rancher. I also am the president of Westbred, a Montana seed research and development firm in Bozeman specializing in developing seed for Montana growers.

House Bill 445 is not a "Farmer Protection Act." Instead, it is a proposal to help those who would pirate seed—this would be at the expense the vast majority of Montana farmers who want new seed opportunities for needed traits such as Wheat Stem Sawfly resistance, drought resistance and increased yield. HB 445 discourages and dampens efforts of research entities such as Westbred which are investing considerable dollars in research to provide new seed opportunities for Montana farmers.

Innocent farmers do not, and have not, had the problems that this legislation attempts to solve. I am not aware of any lawsuit anywhere in the United States or Canada, let alone Montana, where an innocent farmer has been wrongly accused. In fact, I am unaware of any Montana farmer ever sued for this. Research entities, including universities, are not going to waste time going after innocent farmers that have minor percentages of pollen drift, seed mixing, or inadvertent transfer of patented traits in their crops. Liability has not been unfairly transferred to a grower as is alleged. Firms with patents will spend their time on farmer violators where there is no doubt the percentage of the trait is expressed very high in the crop, and not the miniscule levels that this legislation is chasing with its bureaucratic approach.

Innocent farmers presently have all the protection of the courts and laws necessary. I am scratching my head as to why an innocent farmer would need any of this proposed legislation. Science is strong on this. If a farmer does not have high percentages of the transferred trait, why would anyone spend the money and time to pursue? Scientifically, one cannot get high percentages of the trait in their crops without planting it with high percentage of the patented seed. As a farmer, which I am, I would welcome a responsible research company to come onto my place and take samples if an allegation was made against me. An innocent farmer has nothing to hide.

I do understand why someone who has patented seed without the authorization of the patent holder would want this legislation. It will give them time to destroy or hide the evidence.

Corrections and/or disagreements to HB 445:

1. "Whereas" number 5. Liability is not and has not been "unfairly" transferred to innocent farmers, as alleged in this legislation. In fact, where producers have had access to patented technology it has been an overwhelming market share success, i.e. soybeans, canola, corn, cotton, endorsed by farmers' free choice.
2. I would challenge the sponsor to produce one farmer who was wrongly sued and subsequently cleared by the courts.

3. "Whereas" number 4. All plants, patented or not, do this mixing, drifting, etc. To give an accurate perspective of the issue, it must be stated that patented plants are not any different than others.
4. "Whereas" number 2. To be accurate and to give a fair perspective, it should be stated that research in patented plants is leading to strong environmentally positive traits.
5. A "Whereas" should be added that there are already thousands of acres of patented plants in Montana that have not incurred any of these alleged problems, and these crop acres would be in jeopardy if this legislation passes.
6. Farmers presently have all the rights necessary to protect themselves from illegal trespasses of a third party. What this bill actually proposes is a safe harbor for would-be infringers by attempting to restrict a research company from enforcing its rights, such as filing in court to prohibit destruction of evidence. If this bill passes, a seed pirate has all the protection in the world to take up to 10 days or more to destroy the evidence.
7. A farmer already has the protection of Section 3. A farmer is not liable for the possession of a trait if they did not knowingly plant the trait. Federal courts will supersede.
8. A farmer already has the protection of Section 5. In a court of law the defendant has the right to receive a copy of the evidence used against them. Federal courts will supersede.
9. This legislation also adds cost and state staff time to the pursuit of the seed pirates. A federal court of law is still going to look to the custody and credibility of the evidence whether a state employee is involved or not. Right now, any farmer anywhere can request a department of agriculture employee or an extension agent to monitor a field sampling event. We don't need a new law.
10. It also restricts the evidence trail exclusively to the field. Cheaters under this law may harvest the crop and sell it, before the 10 day waiting period is up, and the research company, per this proposal, would not be able to sample the crop on into the channel of trade.
11. Do you really expect any research company to market their products in an area that attempts to restrict their options to a fair trial, such as this legislation's does by restricting the options to a home town trial?
12. Federal law will supersede this bill so all it is does is give a false sense of security to--and possibly even encourage--a seed pirate to infringe on a patent.

In conclusion, this legislation--while it may not be its intent--will discourage research into new opportunities for Montana farmers. It also gives farmers who would pirate seed false hope. Patents are federal. Montana law cannot take away the right to the federal courts concerning federal patents. I respectfully ask that you table this bill.

Thank you. Mr. Chairman